

October 28, 2003

PUBLIC UTILITIES COMMISSION
Investigation of Cornerstone Communication
Inc.'s 10/15/03 Rapid Response Complaint

RECOMMENDATION OF
RAPID RESPONSE TEAM

I. BACKGROUND

On October 15, 2003, Cornerstone Communication Inc. (Cornerstone) filed a Complaint under the Commission's Rapid Response Process. A copy of the redacted version of the Complaint is attached as Exhibit A. In its Complaint, Cornerstone alleged that Verizon was unwilling to give Cornerstone access to Verizon's facilities in and around its Remote Terminal enclosures for the purposes of accessing Verizon's distribution subloops and possible collocation within Verizon's Remote Terminal. Cornerstone alleged that Verizon's actions were inconsistent with the terms of the Interconnection Agreement between Cornerstone and Verizon, Verizon's Collocation Tariff, the Telecommunications Act of 1996, and the public policy interests of the State of Maine. Cornerstone requested that the RRPT order Verizon to: (1) immediately schedule and perform the splicing requested by Cornerstone; (2) immediately make its Remote Terminal site available for inspection; and (3) assign a Staff member to observe and mediate the process of developing procedures for collocation and access to Verizon's subloop unbundled network elements (UNEs).

On October 17, 2003, a conference call was held by the Rapid Response Team, Cornerstone and Verizon. During that call, issues relating to the inspection of Verizon's Remote Terminal were discussed and a tentative resolution was discussed. With respect to the issues relating to splicing, it became very clear that resolution of Cornerstone's Complaint, would require an interpretation of certain provisions of the Federal Communications Commission's (FCC) *Triennial Review Order*.¹ Specifically, paragraph 254 of the TRO, which discusses CLEC access to ILEC copper subloops, contains the following language:

We define the copper subloop UNE as the distribution portion of the copper subloops that is technically feasible to access at terminals in the incumbent LEC's outside plant....including inside wire. We find that any point on the loop where technicians can access the cable without removing a splice case constitutes an

¹¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338 (rel. August 21, 2003) (*Triennial Review Order* or *TRO*).

accessible terminal. As HTBC [High Tech Broadband Coalition] points out, a non-exhaustive list of these points includes the pole or pedestal, the serving area interface (SAI), the NID itself, the MPOE, the remote terminal and the feeder/distribution interface. ***To facilitate competitive LEC access to the copper subloop UNE, we require incumbent LECs to provide, upon site-specific request, access to the copper subloop at a splice near their remote terminals.***

(emphasis added) The FCC's Rules contains a similar statement regarding the definition of accessible terminal and site-specific requests:

A point of technically feasible access is any point in the incumbent LEC's outside plant where a technician can access the copper wire within a cable without removing a splice case. Such points include, but are not limited to, a pole or pedestal, the serving area interface, the network interface device, the minimum point of entry, any remote terminal, and the feeder/distribution interface. ***An incumbent LEC shall, upon a site-specific request, provide access to a copper subloop at a splice near a remote terminal.*** The incumbent LEC shall be compensated for providing this access in accordance with §§ 51.321 and 51.323.

47. C.F.R. § 51.310(b)(1)(i) (emphasis added).

Cornerstone believes the TRO and accompanying Rules allow it to access Verizon's subloops at the Verizon feeder/distribution interface (FDI). In order to reach the FDI, Cornerstone seeks to splice into spare cable pairs in a Verizon distribution cable at an existing splice case near the remote terminal and FDI. The distribution cable in question brings Verizon's copper subloops in Verizon's distribution plant to their terminations on binding posts within the FDI. (See Attachments 2 (diagram) and 3 (explanation) to Cornerstone's Complaint.) Verizon believes that Cornerstone's access can be limited to accessible terminals and that the FCC's requirement that ILECs make routine modifications to their network to accommodate a CLEC's request for UNEs does not modify the requirement for an accessible terminal.

II. RECOMMENDATION

The Rapid Response Process was adopted by the Commission during the Verizon 271 Review Process.² The RRP was designed to address operational issues that arose between and among Verizon and CLECs that required quick resolution. The RRP was not designed to address broad legal or policy questions relating to ILEC/CLEC relations.

The RRPT believes that interpretation of specific provisions of the TRO involves serious legal and policy considerations that should be addressed by the full Commission rather than the RRPT. We also believe that the issues raised by Cornerstone are important and require a swift response. Accordingly, we recommend that the Commission open an investigation into Cornerstone's 10/15/03 Rapid Response Complaint and that it set a deadline of November 7, 2003, for parties to file legal briefs addressing the following questions:

1. Does paragraph 254 of the TRO and/or 47 CFR 51.319(b)(1)(i) add an additional point of access to an ILEC's network, beyond an accessible terminal? Please explain the basis for your position and provide references to any other provisions of the TRO, FCC Rules, or FCC record that support your position.

2. Does the Commission have any jurisdiction to modify the FCC's requirements relating to access to subloops? Please explain the basis for your position and provide references to the TRO or FCC Rules that support your position.

The RRPT (who will then be Advisors) will review the parties' briefs and will submit an Examiner's Report for your consideration. After a decision has been made on this issue, the Advisors will set a procedural schedule for the rest of the proceeding.

Respectfully submitted,

Trina M. Bragdon
On behalf of the
Rapid Response Team

²See Commission's Investigation Into Verizon's Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 2000-849, Order (April 10, 2002).